

E-filing**PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**Name AVILA ELIAS

(Last)

(First)

FILED

07/16 AM 10:48

MCO N

Prisoner Number F 34850HIGH RISK INMATE PRISONInstitutional Address P.O BOX 3030CLERK, U.S. DISTRICT COURTNORTHERN DISTRICT OF CALIFORNIASUSANVILLE CA 96127**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**ELIAS DANIEL AVILA

(Enter the full name of plaintiff in this action.)

CV}

08

3424

vs.

FELKER

Case No.

(To be provided by the clerk of court)

SBA

**PETITION FOR A WRIT
OF HABEAS CORPUS (PR)**

(Enter the full name of respondent(s) or jailor in this action)

Read Comments Carefully Before Filling In**When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 SAN BENITO COUNTY SUPERIOR COURT HOLLISTER CA.

15 Court Location

16 (b) Case number, if known H030600

17 (c) Date and terms of sentence 12/19/2058 - 53 yrs to life

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes ✓ No _____

20 Where?

21 Name of Institution: HIGH DESERT STATE PRISON

22 Address: P.O. BOX 3030, SUSANVILLE CA. 96127

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 1. 422 PC

27 2. 245 (a)(1) PC

28 3. 422 PC

1 3. Did you have any of the following?

2 Arraignment: Yes No _____
 3 Preliminary Hearing: Yes No _____
 4 Motion to Suppress: Yes No _____

5 4. How did you plead?

6 Guilty Not Guilty Nolo Contendere _____

7 Any other plea (specify) _____

8 5. If you went to trial, what kind of trial did you have?

9 Jury Judge alone _____ Judge alone on a transcript _____

10 6. Did you testify at your trial? Yes _____ No

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment	Yes <input checked="" type="checkbox"/>	No _____
13 (b) Preliminary hearing	Yes <input checked="" type="checkbox"/>	No _____
14 (c) Time of plea	Yes <input checked="" type="checkbox"/>	No _____
15 (d) Trial	Yes <input checked="" type="checkbox"/>	No _____
16 (e) Sentencing	Yes <input checked="" type="checkbox"/>	No _____
17 (f) Appeal	Yes <input checked="" type="checkbox"/>	No _____
18 (g) Other post-conviction proceeding	Yes _____	No <input checked="" type="checkbox"/>

19 8. Did you appeal your conviction? Yes No _____

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes No _____

22 Year: 2006 Result: DENIED _____

23 Supreme Court of California Yes No _____

24 Year: 2007 Result: DENIED _____

25 Any other court Yes _____ No

26 Year: _____ Result: _____

27 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes No 2 (c) Was there an opinion? Yes No

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?

4 Yes No 5 If you did, give the name of the court and the result:
6 _____
7 _____8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes No 10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: _____

19 Type of Proceeding: _____

20 Grounds raised (Be brief but specific):
21 a. _____
22 b. _____
23 c. _____
24 d. _____

25 Result: _____ Date of Result: _____

26 II. Name of Court: _____

27 Type of Proceeding: _____

28 Grounds raised (Be brief but specific):

1 a. _____
2 b. _____
3 c. _____
4 d. _____

5 Result: _____ Date of Result: _____

6 III. Name of Court: _____

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. _____
10 b. _____
11 c. _____
12 d. _____

13 Result: _____ Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____
18 b. _____
19 c. _____
20 d. _____

21 Result: _____ Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: THE PROSECUTOR COMMITTED MISCONDUCT REQUIRING REVERSAL
6 OF PETITIONER'S CONVICTION BECAUSE THE PROSECUTOR IMPERMISSIBLY
7 SUPPORTING FACTS: PETITIONER CONTENDS THAT HIS CONVICTION MUST BE REVERSED
8 BECAUSE HE SUFFERED A CONSTITUTIONAL VIOLATION RENDERING HIS CONVICTION
9 UNFAIR. SPECIFICALLY THE PROSECUTOR IN THE CASE, DURING CLOSING -
10 ARGUMENT, ANALOGIZED THE PEOPLE'S BURDEN OF PROOF BEYOND (continue)

11 Claim Two: _____

12 _____
13 Supporting Facts: _____
14 _____
15 _____
16 _____
17 Claim Three: _____
18 _____
19 Supporting Facts: _____
20 _____
21 _____
22 _____

23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 _____
26 _____
27 _____
28 _____

1 CLAIM ONE: (CONTINUED) - ALTERED THE PROOF BEYOND A REASONABLE DOUBT -
2 STANDARD, AND THE COURT OVERRULED THE DEFENSE ATTORNEY'S OBJECTION, THERE-
3 REBY COMPOUNDING THE ERROR.

4

5 SUPPORTING FACTS: A REASONABLE DOUBT TO A TRAFFIC SIGNAL, BECAUSE THE COURT -
6 DID NOT OVERRULE COUNSEL'S TIMELY OBJECTION, THEREBY INDICATING TO THE JURY THE -
7 COURTS APPROVAL OF THE ANALOGY; PETITIONER'S CONVICTION WAS RENDERED FUNDAMENT-
8 ALLY UNFAIR, IN THAT HE WAS CONVICTED BY A JURY RELYING ON A STANDARD OF PROOF -
9 LESS THAN THAT CONSTITUTIONALLY REQUIRED.

10

A. STANDARD OF REVIEW

11 UNDER THE FIFTH AND SIXTH AMENDMENT TO THE FEDERAL CONSTITUTION, MADE APPLIC-
12 ABLE TO THE STATE BY THE FOURTEENTH AMENDMENT, A DEFENDANT IN A CRIMINAL CASE -
13 IS ENTITLED TO DUE PROCESS OF LAW, INCLUDING THE RIGHT TO A FAIR TRIAL WITH PROPER -
14 INSTRUCTIONS AS TO THE PEOPLE'S BURDEN OF PROOF IN A CRIMINAL CASE, SUCH PRO-
15 CESSION REQUIRES THAT THE PEOPLE PROVE BEYOND A REASONABLE DOUBT THAT THE DEFEN-
16 DANT IS GUILTY OF EACH ELEMENT OF THE CRIMES HE IS CHARGED WITH. (IBID.) WHERE
17 THE JURY IS IMPROPERLY INSTRUCTED AS TO THE PROOF BEYOND REASONABLE DOUBT -
18 STANDARD, THE DEFENDANT HAS SUFFERED A DUE PROCESS VIOLATION AND IS ENTITLED
19 TO A REVERSAL OF HIS CONVICTION. (IBID.). WHERE THE DEFENDANT ALLEGES A -
20 CONSTITUTIONAL VIOLATION AT TRIAL, THE STANDARD OF REVIEW IS NORMALLY WHETHER
21 THE ERROR IS HARMLESS BEYOND REASONABLE DOUBT. HOWEVER WHERE THE
22 ERROR IS STRUCTURAL IN NATURE, SUCH AS ERROR IN INSTRUCTING THE JURY -
23 ON THE REASONABLE DOUBT STANDARD, THE ERROR IS PER SE AND REVERSAL -
24 IS REQUIRED. (SULLIVAN V. LOUISIANA, SUPRA, 508 U.S. AT PP. 278-282.)

25

26

27

28

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 CHAPMAN V. CALIFORNIA (1967) 386 U.S. 18 - PEOPLE V. BROWN (2003) 31 CAL. 4TH 4518 - PEOPLE V. -
5 FREEMAN (1994) 8 CAL. 4TH 450 - PEOPLE V. JOHNSON (2004) 115 CAL. APP. 4TH 1169 - PEOPLE V. -
6 NGUYEN (1995) 40 CAL. APP. 4TH 28 - SULLIVAN V. LOUISIANA (1993) 508 U.S. 275 - VICTOR V. NEBRASKA
(1994) 511 U.S. 1

7 Do you have an attorney for this petition? Yes No

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12 Executed on _____



14 Date

15 Signature of Petitioner

16 (Rev. 6/02)

045JR20-6575
\$02.020
07/03/2008
Mailed From: San Jose
US POSTAGE



HIGH DESERT STATE PRISON

FLORES Daniel Avila # F-34850
P.O. Box 3030 Z. UNIT # 135-L
Suisunville, CA 94587
H.D.S.P.

LEGAL MAIL STATE PRISON



~~STAFF DISTRICT~~
~~333 West Santa Clara St. #1060~~
~~San Jose, CA 95113-4717~~

LEGAL MAIL

LEGAL MAIL



LEGAL MAIL

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COURT OF APPEAL

STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT
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SAN JOSE, CA 95113

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